2331.

SUPREME COURT OF THE UNITED STATES.

No. 102.

THE UNITED STATES, PLAINTIFF IN ERROR,

VERSUS

ANDREW HACK ET AL.

IN ERROR TO THE CIRCUIT COURT UNITED STATES FOR THE MARYLAND DISTRICT.

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THE UNITED STATES OF AMERICA, } *to wit:*
District of Maryland, }

At a circuit court of the United States for the fourth circuit in and for the Maryland district, begun and held at the city of Baltimore on the first day of November, in the year of our Lord one thousand eight hundred and thirty-three: Present, the honorable Gabriel Duvall, one of the associate justices of the Supreme Court of the United States, Elias Glenn, judge of Maryland district, Nathaniel Williams, esquire, attorney, Thomas Finley, esquire, marshal, Philip Moore, clerk.

Among other, were the following proceedings, to wit:

THE UNITED STATES,
vs.
ANDREW HACK, THOMAS SEWALL, and JAMES WILKES, jun'r.

Be it remembered, that heretofore, to wit, on the seventeenth day of August, in the year of our Lord one thousand eight hundred and thirty-two,

the said United States of America, by Nathaniel Williams, their attorney, prosecuted and sued forth out of the circuit court here the writ of the said United States of America, of capias ad respondendum, directed to the marshal of the Maryland district aforesaid, in the words, and of the tenor following, to wit:

UNITED STATES OF AMERICA, } *to wit:*
Maryland District, }

Writ.

To the marshal for Maryland district, greeting:

[SEAL.] We command you that you take Andrew Hack, Thomas Sewall, and James Wilkes, junior, late of the Maryland district, yeoman, if they shall be found in your district, and that them, so taken, you safe keep; so that you have their bodies before the judges of the circuit court of the United States for the fourth circuit in and for the Maryland district, at the United States' court-room in the city of Baltimore, on the first day of November next, to answer unto the United States of America in a plea of trespass on the case, &c. Hereof fail not at your peril, and have you then and there this writ. Witness, the honorable John Marshall, chief justice of our Supreme Court, the first Monday in August, in the year of our Lord one thousand eight hundred and thirty-two.

N. W. issued 17th day of August, 1832.

PHILIP MOORE, *Clerk Circuit Court.*

And the aforesaid United States of America, by their attorney aforesaid, on the day of prosecuting and suing forth of the aforesaid writ, declared against the said Andrew Hack, Thomas Sewall, and James Wilkes, junior, in the plea aforesaid, in form following, to wit:

THE UNITED STATES OF AMERICA, } *ss.*
Maryland District, }

Declaration.

Andrew Hack, Thomas Sewall, and James Wilkes, junior, late of the Maryland district, yeomen, were attached to answer unto the United States of America in a plea of trespass on the case, &c. And whereupon the United States of America, by Nathaniel Williams, attorney of the United States in and for the district of Maryland, complain, for that, whereas the said Andrew Hack, Thomas Sewall, and James Wilkes, junior, the defendants in this cause, on the fifteenth day of August, in the year eighteen hundred and thirty-two, to wit, at the district aforesaid, was indebted to the said United States in the sum of three thousand dollars for divers goods, wares, and merchandize by the said United States before that time sold and delivered to the said defendants, and at their special instance and request: And also, in a like sum, for money by the said United States before that time lent and advanced to, and paid, laid out, and expended for, the said defendants, and at their like special instance and request: And, also, in a like sum for other money by the said defendants before that time had and received, to and for the use of the said United States; and being so indebted, the said defendants, in consideration thereof, afterwards, to wit, on the day and year aforesaid, at the district aforesaid, undertook, and then and there faithfully promised the said United States to pay them the said several sums of money in this count mentioned when the said defendants should be thereunto afterwards requested.

And whereas, also, the said defendants, afterwards, to wit, on the day and year aforesaid, at the district aforesaid, accounted with the said United States, of and concerning divers other sums of money before that time due and owing from the said defendants to the said United States, and then being in arrear and unpaid; and upon such accounting the said defendants were then and there found to be in arrear and indebted to the said United States in another large sum of money, to wit, in the further sum of thirty hundred dollars; and being so found in arrear and indebted, the said defendants, in consideration thereof, afterwards, to wit, on the day and year aforesaid, at the district aforesaid, undertook and faithfully promised the said United States to pay them the last mentioned sum of money, when the said defendants should be thereto requested.

Nevertheless, the said defendants not regarding his said promises and undertakings have not yet paid the aforesaid several sums of money, or either of them, or any part of either of them, to the said United States, (although so to do the said defendants were requested by the said United States, to wit, on the day and year aforesaid, and often afterwards, at the district aforesaid;) but to pay the same, the said defendants have hitherto altogether refused, and do still refuse so to do, to the damage of the said United States five thousand dollars; and thereupon they bring suit, &c.

NATHANIEL WILLIAMS,
Dist. Att'y M'd Dist.

At which mentioned first day of November, in the year of our Lord one thousand eight hundred and thirty-two, being the day of the return of the aforegoing writ, comes into the circuit court here the said United States of America, by their attorney aforesaid; and the marshal of the Maryland district aforesaid, to wit, Thomas Finley, gentleman, to whom the said aforegoing writ was in form aforesaid directed, makes return thereof to the court here, thus endorsed, to wit:

"Cepi. THO. FINLEY, *Marshal.*"

Appearance—Rule plea.

And the said Andrew Hack, Thomas Sewall, and James Wilkes, junior, being called, appear in court here by John Glenn, their attorney. And thereupon, on motion of the said United States of America, by their attorney aforesaid, it is ruled by the court here that the said Andrew Hack, Thomas Sewall, and James Wilkes, junior, answer to the declaration aforesaid of the said United States of America in the plea aforesaid, or judgment by the court here will be entered in default thereof; and the said Andrew Hack, Thomas Sewall, and James Wilkes, junior, by their attorney aforesaid, defend the force and injury, when, &c., and pray leave of the court here to imparle until the eighth day of April next, and then to answer to the declaration aforesaid of the said United States of America in the plea aforesaid, and to them it is granted: the same day is given to the aforesaid United States of America, also. At which said eighth day of April, in the year of our Lord one thousand eight hundred and thirty-three, to which said day the said Andrew Hack, Thomas Sewall, and James Wilkes, junior, had leave to imparle, and then to answer to the declaration aforesaid of the said United States of America in the plea aforesaid, come again into the circuit court here as well as the said United States of America, by their attorney aforesaid, as the said Andrew Hack, Thomas Sewall, and James Wilkes, junior, by their attorney aforesaid.

Whereupon, further progress of and upon the premises aforesaid, between the parties aforesaid, by consent of the said parties and their attorneys aforesaid, and, by order of the court here thereon, is further continued until the first day of November next. At which said first day of November, in the year of our Lord one thousand eight hundred and thirty-three, come again into the circuit court here as well the said United States of America, by their attorney aforesaid, as the said Andrew Hack, Thomas Sewall, and James Wilkes, junior, by their attorney aforesaid.

Thereupon, the parties aforesaid, by their attorneys aforesaid, file in the court here the following statement of facts:

THE UNITED STATES, *vs.* ANDREW HACK, THOMAS SEWALL, and JAMES WILKES, jr. } Circuit Court U. S., fourth circuit.

DISTRICT OF MARYLAND, *November term*, 1833.

Statement of facts.

It is agreed between the parties in this case, by their counsel, that John Stouffer is largely indebted to the plaintiffs on sundry judgments rendered against him on custom-house bonds; that the said John Stouffer was, at the date of the said bonds, and of the rendition of the said judgments, a partner in trade with his brother Jacob Stouffer, and so continued until the execution of the deed of trust hereinafter referred to: that the said John and Jacob Stouffer, becoming embarrassed and insolvent in their affairs, on the 19th day of May, 1832, executed a deed of trust to and in favor of the defendants, of all their joint and partnership property, for the benefit of their joint and partnership creditors, having no private or individual estate; that the said property is not sufficient for the full payment of all said creditors, but that the said John Stouffer's undivided half, now in the possession of the said trustees, amount to $974 71.

It is also agreed that the amount of the unsatisfied judgments of the United States against the said John Stouffer is, at this date, $2,100 and upwards, after exhausting his private and individual estate. And the amount now in the possession of the aforesaid trustees, being the proceeds of the said partnership estate, is $1,949 42, one-half of which is $974 71.

Upon the foregoing statement of facts, the district attorney contends that the plaintiffs are entitled to receive from the defendants the sum of $974 71, being the proceeds of John Stouffer's undivided half of, in, and to the aforesaid partnership estate, to be applied to the satisfaction of the aforesaid judgments recovered against the said John Stouffer.

The counsel for the defendants contends that the plaintiffs are not entitled to receive any thing from the defendants in this action, on the ground that the money in their hands is the proceeds of partnership property, the whole of which is inadequate to the entire payment of the partnership debts; and that the plaintiffs are creditors of John Stouffer only, and not of the said partners. The question submitted to this court is, whether the plaintiffs are entitled to recover from the defendants in this case the said sum of $974 71, being one-half of the aforesaid partnership estate. It is finally

agreed that all errors in pleading be mutually released, and that either party shall have the privilege of prosecuting a writ of error to the Supreme Court of the United States.

NATH'L WILLIAMS,
Dist. Att'y.
J. GLENN,
For Defendants.

Judgment.

Whereupon, all and singular the premises being seen, heard, and by the court here fully understood, for that it appears to the court here that the said United States of America are not entitled to recover in the plea aforesaid.

Therefore, it is considered by the court here, that the said United States of America take nothing by their said writ, but that they be in mercy, &c., and that the said Andrew Hack, Thomas Sewall, and James Wilkes, junior, go thereof with day, &c.

Afterwards, to wit, on the second day of December, in the year of our Lord one thousand eight hundred and thirty-three, the aforesaid United States of America, by their attorney aforesaid, produced to the said circuit court here the writ of the United States of America for the correcting of errors of and upon the premises, commanding the record and proceedings of the judgment aforesaid, so as aforesaid rendered, with all things concerning the same, to be transmitted to the Supreme Court of the United States, to be held at the city of Washington, on the second Monday in January next, which said writ of error is in the words, and of the tenor following, to wit:

Writ of error.

THE UNITED STATES OF AMERICA, *ss.*

The President of the United States to the judges of the circuit court of the United States for the district of Maryland, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you, or some of you, between the United States of America, plaintiffs, and Andrew Hack, Thomas Sewall, and James Wilkes, junior, defendants, a manifest error hath happened to the greater damage of the said United States of America, as by their complaint appears: we, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you that, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ; so that you have the same at Washington, on the second Monday in January next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and custom of the United States, should be done.

Witness, the honorable John Marshall, Chief Justice of our Supreme Court, the first Monday in August, in the year of our Lord one thousand eight hundred and thirty-three.

PHILIP MOORE, *Clerk Circuit Court.*

Issued 2d December, 1833.

In pursuance whereof, and according to the form and effect of the act of the Congress of the United States in such case made and provided, a transcript of the record and proceedings of the judgment aforesaid, so as aforesaid rendered, with all things relating to the same, together with the said writ of error, are hereby transmitted to the said Supreme Court of the United States accordingly.

Citation.

The United States of America to Andrew Hack, Thomas Sewall, and James Wilkes, junior, greeting:

You are hereby cited and admonished to appear at a Supreme Court of the United States to be held at the city of Washington on the second Monday in January next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the fourth circuit in and for the Maryland district, wherein the United States of America are plaintiffs, and Andrew Hack, Thomas Sewall, and James Wilkes, junior, are defendants, to show cause, if any there be, why the judgment rendered against the said United States of America, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in this behalf.

Witness my hand and seal, this second day of December, in the year of our Lord one thousand eight hundred and thirty-three.

ELIAS GLENN, *Dist. Judge.* [SEAL.]

Service of this citation acknowledged.

J. GLENN, *for defendants.*

In testimony that the foregoing is a true copy taken from the record and proceedings of the circuit court aforesaid, I hereunto subscribe my name, and affix the seal of the said circuit court, this first day of January, in the year of our Lord one thousand eight hundred and thirty-four.

[L. S.] PHILIP MOORE, *Clerk Circuit Court.*